THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.1349 of 2007

Dated: 25.01.2007

Between:

M. Sreenivasa Rao and others.

..... PETITIONERS

AND

The Executive Officer, Vizianagaram and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.1349 of 2007

ORDER:

The petitioners are allegedly owners of land admeasuring 40 to 50 sq. yards with houses thereon. All of them allegedly purchased piece of land under sale deeds or acquired rights under other such documents. It is their grievance that on 29.12.2006, respondents 1 to 3 came to their houses and tried to evict them by demolishing the houses. They contend that they have obtained necessary electricity connection and also paying taxes to Vizianagaram Municipality. As there is proposal to evict them, they filed instant writ petition seeking a direction to the respondents not to demolish their houses and not to evict them from their houses.

This Court has heard the learned counsel for the petitioners and the learned Assistant Government Pleader for Endowments. Though the petitioners have not referred to the proceedings that were initiated before third respondent, namely, the Deputy Commissioner of Endowments, they have annexed along with the writ affidavit the copies of the petitions filed by them before third respondent seeking to set aside the *ex parte* orders passed under Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (the Act, for brevity). From a reading of these documents, it is revealed that the property, which is in possession of the petitioners, is owned by Sri Mannar Raja Gopala Swamy Vari Temple, Vizianagaram. The said temple filed O.A.No.393 of 1997 against first petitioner and another under Section 83 of the Act. Similarly O.A.Nos.394, 395 and 403 of 1997 were filed against other petitioners. Third respondent passed orders for eviction under Section 83 of the Act and in execution thereof, the petitioners were asked to vacate the premises. After coming to know of these proceedings, the petitioners admittedly preferred applications under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC) to set aside the *ex parte* orders/decrees passed by third respondent. These applications filed on 08.01.2007 are still pending.

There cannot be any dispute that when once an order is passed under Section 83 of the Act by the Deputy Commissioner of Endowments for removal of the encroachments from the temple property, such an order can be implemented by following the procedure under Section 84(1) of the Act. If a person is aggrieved by such order passed under Section 83 of the Act, he may either avail the remedy of revision under Section 92 of the Act or such person disputes the title of the religious institution or temple, he has to file a civil suit in the civil Court. In this case alleging that they did not have any notice of the proceedings before third respondent, they have already filed applications to set aside

the *ex parte* orders passed by third respondent. Therefore, they have to seek remedy from third respondent and this writ petition is wholly misconceived.

In the result, giving liberty to the petitioners to approach the Deputy Commissioner, Visakhapatnam, and seek appropriate orders in the applications already filed to set aside *ex parte* orders passed under Section 83 of the Act, the writ petition is dismissed. No costs.

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(**V.V.S.RAO, J**)

25th January, 2007
ghn